

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

MICHAEL CLARK,

Plaintiff,

v.

OFFICER GUERRERO,

Defendant.

2:09-CV-141 JCM (PAL)

**ORDER**

Presently before the court is Magistrate Judge Leen's order and report of findings and recommendation. (Doc. # 102). An objection to the report and recommendation was filed. (Doc. # 103).

Also before the court is plaintiff Michael E. Clark's motion for entry of clerk's default. (Doc. # 115). Defendants have filed a response. (Doc. # 115). No reply has been filed.

**I. Report and Recommendation**

This court "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate." 28 U.S.C. § 636(b)(1). Where a party timely objects to a magistrate judge's report and recommendation, then the court is required to "make a de novo determination of those portions of the [report and recommendation] to which objection is made." 28 U.S.C. § 636(b)(1).

Where a party fails to object, however, the court is not required to conduct "any review at all . . . of any issue that is not the subject of an objection." *Thomas v. Arn*, 474 U.S. 140, 149 (1985). Indeed, the Ninth Circuit has recognized that a district court is not required to review a

1 magistrate judge's report and recommendation where no objections have been filed. *See United*  
 2 *States v. Reyna-Tapia*, 328 F.3d 1114 (9th Cir.2003) (disregarding the standard of review  
 3 employed by the district court when reviewing a report and recommendation to which no  
 4 objections were made); *see also Schmidt v. Johnstone*, 263 F.Supp. 2d 1219, 1226 (D. Ariz.  
 5 2003) (reading the Ninth Circuit's decision in *Reyna-Tapia* as adopting the view that district  
 6 courts are not required to review "any issue that is not the subject of an objection."). Thus, if  
 7 there is no objection to a magistrate judge's recommendation, then this court may accept the  
 8 recommendation without review. *See e.g., Johnstone*, 263 F.Supp.2d at 1226 (accepting, without  
 9 review, a magistrate judge's recommendation to which no objection was filed).

10 Defendants objected to a procedural timeline and ruling in Magistrate Judge Leen's order  
 11 and report and recommendation. (See doc. # 103). Magistrate Judge Leen then resolved the  
 12 issue with a new order. (Doc. # 105). Defendants did not oppose any substantive findings or  
 13 recommendations dismissing certain claims by plaintiff, some with prejudice and some without  
 14 prejudice.

15 Nevertheless, this court finds it appropriate to engage in a de novo review to determine  
 16 whether to adopt the recommendation of the magistrate judge. Upon reviewing the  
 17 recommendation, defendants failure to object to any substantive findings, and plaintiff's failure  
 18 to object or to file a second amended complaint, the court finds good cause to adopt the  
 19 magistrate's findings and recommendations in full.

## 20 **II. Default**

21 Plaintiff filed a motion with the court seeking entry of clerk's default because defendants  
 22 had yet to answer his complaint. The court denies the motion.

23 Magistrate Judge Leen established a deadline date of September 28, 2012, for the  
 24 defendants to answer plaintiff's complaint. (Doc. # 105). Defendants timely answered. (*See*  
 25 docs. # 110 & 112). Defendants are defending the action and no basis exists for entry of default.

26 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Magistrate Judge  
 27 Leen's order and report and recommendation (doc. # 102) be, and the same hereby, is  
 28


ADOPTED in its entirety.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that plaintiff's motion for entry of clerk's default (doc. # 115) be, and the same hereby, is DENIED.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that plaintiff's claim against Warden Williams for retaliation under the First Amendment be DISMISSED without leave to amend.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that plaintiff's claim against Warden Williams for a Fourteenth Amendment due process violation related to the warden's failure to mail a grievance to the Office of the Inspector General be DISMISSED without leave to amend.

DATED December 13, 2012.

  
UNITED STATES DISTRICT JUDGE